

FCC MAIL SECTION

Federal Communications Commission

DA 99-502

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Before the
Federal Communications Commission
DISPATCHED BY Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Grants and Milan, New Mexico)

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MM Docket No. 99-75
RM-9446

NOTICE OF PROPOSED RULE MAKING**Adopted: March 3, 1999****Released: March 19, 1999**

Comment Date: May 10, 1999

Reply Comment Date: May 25, 1999

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Don Davis, licensee of Station KQEO, Channel 264A, Grants, New Mexico, requesting the reallocation of Channel 264A from Grants to Milan, New Mexico, as the community's second local aural and first local FM service. Petitioner states that it will apply for the channel, if allotted.

2. Petitioner filed its request pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990).

3. In support of its proposal, petitioner states that Milan is an incorporated village with a 1990 U.S. Census population of 1,911 persons. It points out that Milan currently receives local aural service from only a daytime-only AM station and thus the reallocation would provide the community with its first fulltime local aural service. According to petitioner, Grants, with a population of 8,626 persons, will continue to receive service from one fulltime AM station and three FM stations.¹ In addition, it notes that there are currently pending before the Commission

¹ The Commission has before it the request of Educational Media Foundation, permittee of Station KQLV, Channel 288C, to substitute Channel 288C1 for Channel 288C at Grants, reallocate Channel 288C1 to Peralta, and modify Station KQLV's construction permit to specify Peralta as its community of license. In addition, it requests the allotment of Channel 244C3 to Grants. See, MM Docket 98-158, 13 FCC Rcd 17733 (1998).

applications for a construction permit for a new station to operate on noncommercial FM Channel 213C.

4. We believe petitioner's proposal warrants consideration since the allotment of Channel 264A to Milan could provide the community with its second local and first fulltime aural service. Channel 264A can be allotted to Milan in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.7 kilometers (3.6 miles) south, which is Station KQEO's presently licensed transmitter site.² Therefore, there will be no area which will gain or lose service. Further, Station KQEO's 70 dBu signal will not encompass any part of an Urbanized Area.

5. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Grants, New Mexico	224C2 ³ , 264C2 ⁴ , 279C, 288C ⁶	224A, 244C3 ⁵ , 279C
Milan, New Mexico	--	264A

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before May 10, 1999, and reply comments on or before May 25, 1999, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

² The coordinates for Channel 264A at Milan are 35-07-09 North Latitude and 107-54-08 West Longitude.

³ Station KAIU has been downgraded from Channel 224C2 to Channel 224A and is now licensed as a Class A station. See BLH-961213KC. The Table will be amended herein to reflect the channel change.

⁴ Station KQEO has been downgraded from Channel 264C2 to Channel 264A and is now licensed as a Class A station. See BLH-961213KB. The Table will be amended herein to reflect the channel change.

⁵ See, fn 1, *supra*.

⁶ See fn. 1, *supra*.

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8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239) at its headquarters, 1919 M Street, N.W., Washington, D.C.